2008

American Fork City v. Steven B. Cummings : Brief of Appellee

Utah Court of Appeals

IN THE UTAH COURT OF APPEALS

AMERICAN FORK CITY, Plaintiff / Appellee, **vs.** **STEVEN B. CUMMINGS,** Defendant / Appellant.	**BRIEF OF THE APPELLEE** Case No. 20080477-CA

APPEAL FROM CONVICTION FOR DISORDERLY CONDUCT, INFRACTION, ON APRIL 9, 2008, IN THE FOURTH JUDICIAL DISTRICT COURT, UTAH COUNTY, STATE OF UTAH, AMERICAN FORK DEPARTMENT, JUDGE HOWARD H. MAETANI

Steven B. Cummings
43 North 100 East
American Fork, Utah 84003

APPELLANT

James "Tucker" Hansen
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Timothy G. Merrill
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ATTORNEYS FOR APPELLEE

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STATEMENT OF JURISDICTION

The Court of Appeals has jurisdiction of this case pursuant to §78A-4-103 of the Utah Code Annotated. The Court of Appeals may hear "appeals from a court of record in criminal cases." §78-A-4-103(2)(e).

DETERMINATIVE PROVISIONS

UTAH CODE ANN. §76-1-201

UTAH CODE ANN. §77-1-3

UTAH CODE ANN. §77-2-1.1

UTAH CODE ANN. §77-7-18

UTAH CODE ANN. §77-7-21

RULE 4, UTAH RULES OF CRIMINAL PROCEDURE

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RULE 10, UTAH RULES OF CRIMINAL PROCEDURE

RULE 30, UTAH RULES OF CRIMINAL PROCEDURE

RULE 24, UTAH RULES OF APPELLATE PROCEDURE

STATEMENT OF MATERIAL FACTS

1. Defendant/Appellant (hereafter referred to as "Cummings") is a resident of American Fork, Utah. (R. 0003).

2. On August 15, 2007, Eric Wetzel, an employee of Rocky Mountain Power Company, was dispatched to shut the power off at Cummings' home based on an unpaid balance on an invoice. (R. 0145).

3. Wetzel followed standardized procedure when he disconnected the power from Cummings' home. Wetzel attempted to inform the owner that the power would be shut off. He knocked on the front door but received no response. (R. 0144).

4. Later that day, after Cummings had contacted the power company requesting his power be restored, Wetzel returned to Cummings' home to reconnect the power. (R. 0144).

5. While Wetzel worked to reconnect the power, Cummings approached Wetzel. An argument ensued, during which Cummings threatened Wetzel repeatedly and shouted in a loud voice for him to "get off my property!" (R. 0144).

6. During the argument, Cummings physically shoved Wetzel backwards, causing Wetzel to fall into a bush. Wetzel sustained a number of scratches on his back. (R. 0144).

7. Wetzel feared for his safety based on the angry and threatening behavior of Cummings. Wetzel returned to his vehicle and called the police. (R. 0144).

8. Cummings was issued a Uniform Citation/Information and Summons to Appear by Officer Russ Anderson of the American Fork Police. The charge was for assault, §76-5-102 of the Utah Code Ann. (R. 0003).

9. On September 5, 2007, Cummings made his first appearance before the Fourth District Judge Howard Maetani in American Fork. (R. 0292, p. 2).

10. Cummings was furnished a copy of the Information prepared by the Prosecutor, which charged Cummings with the crime of Disorderly Conduct, an infraction. The Information contained, *inter alia*, the name and birth date of Cummings, the nature and date of the offense, and the name of the witnessing officer. (R. 0004).

11. Judge Maetani asked Cummings, "What's your plea to disorderly conduct, infraction?" Cummings refused to enter a plea and requested time to review the charges. Judge Maetani continued the Arraignment out two weeks. The Prosecutor gave Cummings a copy of the Information. (R. 0292, p. 3-6).

13. Cummings refused to sign the log sheet on this and subsequent appearances. (R. 0005).

14. At the second Arraignment held on September 19, 2007, the Prosecutor provided Cummings with discovery in open Court. This consisted of all of the information in the prosecutor's file, consisting of a police report and Information. (R. 0293, pp. 4 – 5; R. 0055, ¶ 5).

15. Cummings again requested more time to review the matter before entering a plea. The Arraignment was continued out one month. (R. 0293, p. 6).

16. On the date of his third Arraignment on October 17, 2007, Cummings filed a Motion to dismiss with the Court and hand-delivered a copy to the Prosecutor. (R. 0021-0017).

17. At the Arraignment, Cummings asked the Judge to rule on his motion. (R. 0294, p. 3, lines 13-15). Judge Maetani said, "Well, this is the first I've heard that there's a motion to dismiss before me." (R. 0294, p. 4, lines 1-2).

18. The Court heard oral arguments on November 6, 2007 on Cummings' Motion to Dismiss. It was denied. (R. 0056-0053; R. 0295, p. 12, lines 5-7).

19. On November 6, 2007, the Court said, "Now, Mr. Cummings, I'm going to ask you again, what plea will you enter? And you want the Information read to you on the record?" (R. 0295, p. 12, lines 8-10).

20. Cummings refused to enter a plea, and the Judge instructed him, "Come back at 10:00 o'clock November 28th for your arraignment and enter a plea." (R. 0295, p. 13, lines 4-5).

21. On November 28, 2007, the fifth Arraignment, Cummings was asked to enter a plea to disorderly conduct. He refused, and stated, "I just can't plea, your Honor." Judge Maetani responded, "I'll enter a not guilty plea." (R. 0296, p. 4, lines 13-15).

22. Cummings filed a Motion to Suppress Evidence and Testimony and a Motion to Dismiss on January 24, 2008. (R. 0088).

23. The Court denied both of Cummings' motions on January 29, 2008. (R. 0297, p. 55, lines 4-7).

24. After holding a bench trial on January 29, 2008, the Court found Cummings guilty of disorderly conduct, an infraction. (R. 0145 – 0143).

SUMMARY OF ARGUMENT

No harmful error was made by the trial court in its careful and deliberate handling of the proceedings against Cummings for disorderly conduct. The trial court obtained jurisdiction over Cummings when he committed the crime within the court's jurisdiction. Cummings' constitutional rights were maintained during the entire process, from arraignment to discovery to sentencing, under the prescribed processes of law. Cummings' has failed to show how any perceived error made by the trial court would have altered the outcome of his conviction.

ARGUMENT

I. THE TRIAL COURT HAS JURISDICTION OVER CUMMINGS PURSUANT TO §76-1-201 OF THE UTAH CODE ANNOTATED.

The trial court has jurisdiction over Cummings because the offense was committed in American Fork, Utah. (R. 0003). The law states that "A person is subject to prosecution in this state for an offense which he commits . . . if the offense is committed either wholly or partly within the state." §76-1-201(1)(a) of the Utah Code Ann. Further, venue was proper in the trial court under §76-1-202. "Criminal actions shall be tried in the county, district, or precinct where the offense is alleged to have been committed." *Id.* The offense occurred entirely in American Fork. Therefore, the Fourth District Court,

American Fork Department, held jurisdiction over Cummings in this matter. "The district court has original jurisdiction in all matters civil and criminal, not excepted in the Utah Constitution and not prohibited by law." §78A-5-102 of the Utah Code Ann.

II. CUMMINGS WAS PROPERLY SERVED WITH A SUMMONS PURSUANT TO §77-7-18 OF THE UTAH CODE ANNOTATED.

Officer Russ Anderson of the American Fork Police Department properly served Cummings with a Citation pursuant to §77-7-18 of the Utah Code Ann., which provides that "A police officer, in lieu of taking a person into custody . . . may issue and deliver a citation requiring any person subject to arrest or prosecution on a misdemeanor or infraction charge to appear at the court of the magistrate." Cummings was cited for Assault based on Officer Anderson's investigation of the incident. (R. 0003; R. 0297, lines 10-23).

The Citation conformed with the requirements of law as provided in §77-7-20 of the Utah Code Ann. (R. 0003). The Citation contained the signature of Cummings. A copy of the signed Citation was served on Cummings: "I [OFFICER ANDERSON] CERTIFY THAT [A] COPY OF THIS SUMMONS AND CITATION WAS GIVEN TO THE DEFENDANT ACCORDING TO LAW." (R. 0003). Thus, Cummings was served with a summons on August 15, 2007. *Id.*

III. THE INFORMATION MET THE REQUIREMENTS OF LAW.

Cummings appeared in court on September 5, 2007 and was served with an Information prepared by the Prosecutor. (R. 0004, R. 0292, p. 3-6). An "Information" is defined as "an accusation, in writing, charging a person with a public offense which is

presented, signed, and filed in the office of the clerk where the prosecution is commenced." Utah Code Ann. §77-1-3(3). The prosecutor may "present and file the information in the office of the clerk where the prosecution is commenced upon the signature of the prosecuting attorney." §77-2-1.1(2). The contents of an Information are governed by the Utah Rules of Criminal Procedure, which require that an

> information shall charge the offense for which the defendant is being prosecuted by using the name given to the offense by common law or by statute or by stating in concise terms the definition of the offense sufficient to give the defendant notice of the charge. An information may contain or be accompanied by a statement of facts sufficient to make out probable cause to sustain the offense charged where appropriate. Such things as time, place, means, intent, manner, value and ownership need not be alleged unless necessary to charge the offense. *Rule 4(b), URCrP*

In the present case, the City's Information set forth the charge of Disorderly Conduct under §76-9-102, described the offense using statutory language, its classification, included the date and location of the offense, and listed Officer Russ Anderson as the witness. (R. 0004). The Information was signed by the prosecutor, presented, and filed with the trial court. (R. 0054, ¶ 3). Therefore, it met all the requirements of law and was a valid charging document.

IV. CUMMINGS WAS PROPERLY SERVED WITH THE INFORMATION AND ARRAIGNED UNDER THE RULES OF CRIMINAL PROCEDURE.

The subsequent Arraignment of Cummings was performed pursuant to the Rules of Criminal Procedure. "An information shall be filed and proceedings held in accordance with the Rules of Criminal Procedure." §77-7-21 of the Utah Code Ann.

Cummings was served with a copy of the Information on September 5, 2007 when he made his first appearance before Judge Maetani. (R. 0292, 4:25 – 5:11). "The magistrate having jurisdiction over the offense charged shall, upon the defendant's first appearance, inform the defendant of the charge in the information or indictment and furnish a copy." Rule 7 of the URCrP. After Cummings had reviewed the Information, the Judge asked him, "What's your plea to disorderly conduct, infraction?" (R. 0292, p. 3, lines 12-13). Rule 10(a) of the Rules of Criminal Procedure states that "Arraignment shall be conducted in open court and shall consist of reading the indictment or information to the defendant or stating to him the substance of the charge and calling on him to plead thereto. He shall be given a copy of the indictment or information before he is called upon to plead." This procedure was followed.

Cummings was not entitled to a preliminary hearing for an infraction. The Rules of Criminal Procedure state that "If a defendant is charged with a felony, the defendant shall be advised of the right to a preliminary examination." Rule 7(h)(1) (emphasis added). Cummings was never arrested nor detained. On the other hand, "If the charge against the defendant is a misdemeanor, the magistrate shall call upon the defendant to enter a plea." Rule 7(g). Over a period of three months, Cummings was asked to enter a plea on five separate occasions. Judge Maetani finally entered a plea of "not guilty" when Cummings stated, "I just can't plea, your Honor." (R. 0296, p. 4, lines 13-15). §77-13-5 instructs that "When a defendant does not enter a plea, the court shall enter a

plea of not guilty for him." Throughout the entire process, Cummings' due process was respected. In no way were his substantial rights prejudiced in any way.

V. CUMMINGS WAS PROVIDED DISCOVERY IN CONFORMANCE WITH RULE 16 OF THE RULES OF CRIMINAL PROCEDURE.

The Prosecutor gave Cummings discovery in open court on September 19, 2007. (R. 0055, ¶ 5). This consisted of all of the information in the prosecutor's file, consisting of a police report and Information. (R. 0293, pp. 4 – 5). Cummings subsequently filed a Bill of Particulars, to which the City responded on December 12, 2007. (R. 0067-0066). In response to the City's Response to Defendant's Bill of Particulars, Cummings filed a Notice of Fault (R. 0070-0068), a Notice of Default (R. 0077-0075) and a Motion to Dismiss (R. 0079-0086).

Cummings' Bill of Particulars contained improper, immaterial, and impertinent content. "The court may strike and disregard all or any part of a pleading or other paper that contains redundant, immaterial, impertinent or scandalous matter." Rule 10(h) of the Utah Rules of Civil Procedure. Examples of the questions Cummings posed:

35. Do you believe that you have a duty as part of your job, to uphold the Constitution of the United States of America as set forth in 1787? (R. 0061)

38. Do you recognize that demandant has unalienable rights? If not, why? When did I lose them? What action did I take to lose them? (R. 0061)

48. Does it violate fundamental rights as set forth by nature's god and nature's law? (R. 0060).

50. Is it under revenue powers? (R. 0060).

55. Do you have a license to practice law? (a) if so, who issued the license? (b) Was it legislative, executive or judicial? (R. 0060).

56. Do you understand that willful and intentional actions which are taken by you in your capacity as an officer of the court, but outside the scope of authority and discretion, which serve to violate demandant's civil rights, may subject you to civil suit as an individual? (R. 0059).

66. In as much as it is impossible for any person to actually be bound to anything that they do not actually know or have read, has the officer in question ever been certified as having factually read the Constitution of the United States of America, from the first word to the last without accompaniment of influence from any external source whatsoever ? If so, when did such certified reading of the Constitution take place? Who were the witnesses which certified such reading? Where was the certified reading, if any, recorded? Was the alleged certified reading in effect at the time of [the] alleged occurrence now being complained of? (R. 0058).

The City provided Cummings with all of the information it had in its file. (R. 0055, ¶ 5). Cummings argues that the City had another file on him. This is true but misleading. Cummings was involved in a separate incident in 2006 that involved driving without a license. That case was dismissed and is entirely irrelevant to this matter. The City responded to all of Cummings' reasonable requests that pertained to this case. The trial court noted that the Prosecution had done Cummings "a service" by providing discovery without a written request. (R. 0293, p. 6, lines 7-9).

Cummings was not given a Witness List because he never made request to the City. Cummings mistakenly claims that his Bill of Particulars requested a Witness List. *Appellant's Brief*, pp. 28-29. This is not so. In context, the Bill of Particulars did not ask for a Witness List, but for the names of any witnesses who observed the incident:

20. Is the named defendant a statutory person? (R. 0062).

21. What facts are relied upon to determine that named defendant is a statutory person? (R. 0062).

22. Is the INFORMATION signed by you? (If so, when, where and are you a citizen or resident of some venue/which venue? (R. 0062).

23. What material facts do you rely upon to set forth that the acts and actions of the named defendant are violations of Utah Law? (R. 0062).

24. What does enforcement officer contend he relied upon to determine demandant was in violation of the law? (R. 0062).

25. Was demandant actually identified as the owner of the property where any such acts or actions were to have occurred? (R. 0062).

26. Identify all witnesses. (R. 0062, emphasis added).

27. Identify who signed the charging instrument? (R. 0062).

28. Where was the charging instrument signed? (R. 0062).

It is apparent that Cummings was seeking information regarding who witnessed the incident, not which witnesses would testify at trial. The Police Report which had been given to Cummings contained all of the information the City had regarding who witnessed the incident. In addition, Cummings has failed to show how he was prejudiced by not having a Witness List when all of the Prosecution's witnesses were listed in the Police Report. Cummings claim of reversible error fails because he has not demonstrated a reasonable likelihood of a more favorable result had he been given a formal Witness List. *See, e.g., State v. Knight*, 734 P.2d 913, 919 (Utah 1987); *State v. Hopkins*, 1999 UT 98, ¶ 22, 989 P.2d 1065 (Utah 1999).

Cummings' contentions regarding discovery were disposed of by the trial court. "A trial court is allowed broad discretion in granting or refusing discovery and inspection . . . and its determinations on this subject will not be overturned on appeal unless the

court has abused its discretion." *State v. Knill*, 656 P.2d 1026, 1027 (Utah 1982). The trial court summarily denied Cummings' claims based on the fact that the City had complied with his reasonable requests. The trial court ruled, "The City properly granted discovery to Defendant on September 19, 2007 in conformance with Rule 16 of the Utah Rules of Criminal Procedure by providing a copy of its entire file to Defendant." (R. 0053).

VI. APPELLANT'S BRIEF "POINT V" AND "POINT VI" SHOULD BE DISREGARDED PURSUANT TO RULE 24(k) OF THE RULES OF APPELLATE PROCEDURE.

a. Cummings' Brief contains burdensome, emotional, immaterial, inaccurate and inadequate arguments.

It is difficult to distill the essence of Cummings' arguments in Point V and Point VI. It appears the primary points are:

1. Cummings disagreed with the trial court's rulings. (Appellants' Brief, pp. 30-36.)
2. The trial court "ignored defendant's valid objections." (*Id.* at 30.)
3. The trial court informed Cummings that his appeal needed to wait until a final judgment was rendered. (*Id.* at 31.)
4. Cummings "did not receive a proper arraignment." (*Id.* at 32).
5. Cummings was not satisfied with the City's discovery responses. (*Id.*)
6. Despite having the Police Report and Information, Cummings was "left to speculate what the exact nature and cause of charges alleged were." (*Id.*)

7. The trial court did not properly conceptualize the difference between a bush and a hedge, and the distinction between Cummings' front yard and his side yard. (*Id.* at 35.)

8. The Information was defective because, *inter alia*, it did not contain the Prosecutor's bar number. (*Id.* at 40.)

The Court of Appeals may disregard a Brief that is filled with burdensome, emotional, immaterial and inaccurate arguments. *See Koulis v. Standard Oil Co.*, 746 P.2d 1182, 1185 (Utah Ct. App. 1987); *see also* Rule 24(k) of the Rules of Appellate Procedure. Cummings characterizes the trial court as "disinterested" (*Appellant's Brief*, p. 31) and "mechanical" (*Id.* at 30 and 34), when in fact the record as a whole reflects a generous and considerate court. Cummings was provided a courtesy copy of the Information when he refused to plead (R. 0292, p. 3-6); Cummings was provided discovery without charge before he made any written request (R. 0293, p. 6, lines 7-9); the trial court allowed Cummings 5 separate opportunities to enter a plea to an infraction over the course of 3 months; the trial court granted Cummings substantial leeway during his self-representation at trial; and the transcripts as a whole reflect a patient and accommodating judge throughout the entire proceedings.

Cummings further disparages the Prosecutor by stating that he utilized "ambush and subterfuge tactics circumventing numerous basic rules." (Appellant's Brief, p. 39). Derogatory references to others is of no assistance in attempting to resolve any legitimate issues. *See State v. Cook*, 714 P.2d 296, 297 (Utah 1986). In reality, Cummings

consistently confounds the applicable Rules of Criminal Procedure and inserts irrelevant Rules of Civil Procedure (e.g., the manner of service and content of the Information; *see Appellant's Brief*, pp. 39-40). Furthermore, Cummings' claim that he "has never understood the 'Information' or the charges" for disorderly conduct is questionable in light of the fact that he has prepared, *pro se*, a docketing statement and appellate brief.

Points V and VI of Appellate's Brief also lack sufficient authority and are therefore inadequately briefed. "While failure to cite to pertinent authority may not always render an issue inadequately briefed, it does so when the overall analysis of the issue is so lacking as to shift the burden of research and argument to the reviewing court." *State v. Thomas*, 961 P.2d 299, 305 (Utah 1998). The arguments are largely conclusory statements that misstate the law (*e.g.*, "Prosecution's case actually revealed that Mr. Wetzel knew and remembered defendant prior to incident and that any intent or motive rested with Mr. Wetzel not defendant who testified that he did not know who this gentleman was" (*Appellant's Brief*, p. 37)). A brief that contains "a disjointed array of facts" is inadequate. *State v. Green*, 2005 UT 9, ¶ 12, 108 P.3d 710 (Utah 2005).

b. Cummings' Brief fails to show any harmful error.

Appellant's Brief fails to state how the trial court committed reversible error. The Utah Supreme Court has stated, "[W]e will overturn the trial court's rulings only if we find that (i) an error exists; (ii) the error should have been obvious to the trial court; and (iii) the error is harmful, i.e., absent the error, there is a reasonable likelihood of a more favorable outcome for [defendant]." *Utah v. Hassan*, 2004 UT 99, ¶ 10, 108 P.3d 695

(Utah 2004) (internal citations omitted). Cummings' claims (outlined, *supra*) fail to meet the standard of "harmful" error. Rule 30 of the Utah Rules of Criminal Procedure states, "Any error, defect, irregularity or variance which does not affect the substantial rights of a party shall be disregarded." Nothing in Appellant's Brief puts in question the trial court's conviction of Cummings for Disorderly Conduct. The trial court duly received evidence at trial, carefully considered the evidence and testimony, and rendered a ruling. (R. 0297). Cummings has failed to show prejudice or how his substantial rights were impaired.

CONCLUSION

Cummings' arguments fail to show any reversible error on the part of the trial court or City. Therefore, the City respectfully requests that Cummings' conviction be affirmed.

RESPECTFULLY SUBMITTED this 13th day of November, 2008.

HANSEN, WRIGHT & EDDY

TIMOTHY G. MERRILL
DEPUTY AMERICAN FORK PROSECUTOR

MAILING CERTIFICATE

I hereby certify that I mailed two true and correct copies of the foregoing **BRIEF OF THE APPELLEE**, postage prepaid by first-class mail, on this 13th day of November, 2008, to the following:

Steven Cummings
43 North 100 East
American Fork, Utah 84003

SECRETARY

ADDENDUM

76-1-201. Jurisdiction of offenses.

(1) A person is subject to prosecution in this state for an offense which he commits, while either within or outside the state, by his own conduct or that of another for which he is legally accountable, if:

(a) the offense is committed either wholly or partly within the state;

(b) the conduct outside the state constitutes an attempt to commit an offense within the state;

(c) the conduct outside the state constitutes a conspiracy to commit an offense within the state and an act in furtherance of the conspiracy occurs in the state; or

(d) the conduct within the state constitutes an attempt, solicitation, or conspiracy to commit in another jurisdiction an offense under the laws of both this state and the other jurisdiction.

(2) An offense is committed partly within this state if either the conduct which is any element of the offense, or the result which is an element, occurs within this state.

(3) In homicide offenses, the "result" is either the physical contact which causes death or the death itself.

(a) If the body of a homicide victim is found within the state, the death shall be presumed to have occurred within the state.

(b) If jurisdiction is based on this presumption, this state retains jurisdiction unless the defendant proves by clear and convincing evidence that:

(i) the result of the homicide did not occur in this state; and

(ii) the defendant did not engage in any conduct in this state which is any element of the offense.

(4) An offense which is based on an omission to perform a duty imposed by the law of this state is committed within the state regardless of the location of the offender at the time of the omission.

(5) (a) If no jurisdictional issue is raised, the pleadings are sufficient to establish jurisdiction.

(b) The defendant may challenge jurisdiction by filing a motion before trial stating which facts exist that deprive the state of jurisdiction.

(c) The burden is upon the state to initially establish jurisdiction over the offense by a preponderance of the evidence by showing under the provisions of Subsections (1) through (4) that the offense was committed either wholly or partly within the borders of the state.

(d) If after the prosecution has met its burden of proof under Subsection (5)(c) the defendant claims that the state is deprived of jurisdiction or may not exercise jurisdiction, the burden is upon the defendant to prove by a preponderance of the evidence:

(i) any facts claimed; and

(ii) why those facts deprive the state of jurisdiction.

(6) Facts that deprive the state of jurisdiction or prohibit the state from exercising jurisdiction include the fact that the:

(a) defendant is serving in a position that is entitled to diplomatic immunity from prosecution and that the defendant's country has not waived that diplomatic immunity;

(b) defendant is a member of the armed forces of another country and that the crime that he is alleged to have committed is one that due to an international agreement, such as a status of forces agreement between his country and the United States, cedes the exercise of jurisdiction over him for that offense to his country;

(c) defendant is an enrolled member of an Indian tribe, as defined in Section **9-9-101**, and that the Indian tribe has a legal status with the United States or the state that vests jurisdiction in either tribal or federal courts for certain offenses committed within the exterior boundaries of

a tribal reservation, and that the facts establish that the crime is one that vests jurisdiction in tribal or federal court; or

(d) offense occurred on land that is exclusively within federal jurisdiction.

(7) (a) The Legislature finds that identity fraud under Chapter 6, Part 11, Identity Fraud Act, involves the use of personal identifying information which is uniquely personal to the consumer or business victim of that identity fraud and which information is considered to be in lawful possession of the consumer or business victim wherever the consumer or business victim currently resides or is found.

(b) For purposes of Subsection (1)(a), an offense which is based on a violation of Chapter 6, Part 11, Identity Fraud Act, is committed partly within this state, regardless of the location of the offender at the time of the offense, if the victim of the identity fraud resides or is found in this state.

(8) The judge shall determine jurisdiction.

Amended by Chapter 151, 2004 General Session
Amended by Chapter 227, 2004 General Session
Download Code Section Zipped WordPerfect 76_01_020100.ZIP 4,188 Bytes

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Last revised: Wednesday, October 08, 2008

77-1-3. Definitions.

For the purpose of this act:

(1) "Criminal action" means the proceedings by which a person is charged, accused, and brought to trial for a public offense.

(2) "Indictment" means an accusation in writing presented by a grand jury to the district court charging a person with a public offense.

(3) "Information" means an accusation, in writing, charging a person with a public offense which is presented, signed, and filed in the office of the clerk where the prosecution is commenced pursuant to Section **77-2-1.1**.

(4) "Magistrate" means a justice or judge of a court of record or not of record or a commissioner of such a court appointed in accordance with Section **78A-5-107**, except that the authority of a court commissioner to act as a magistrate shall be limited by rule of the judicial council. The judicial council rules shall not exceed constitutional limitations upon the delegation of judicial authority.

Amended by Chapter 3, 2008 General Session
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Last revised: Wednesday, October 08, 2008

77-2-1.1. Signing and filing of information.

The prosecuting attorney shall sign all informations. The prosecuting attorney may:

(1) sign the information in the presence of a magistrate; or

(2) present and file the information in the office of the clerk where the prosecution is commenced upon the signature of the prosecuting attorney.

Enacted by Chapter 33, 1992 General Session
Download Code Section Zipped WordPerfect 77_02_000101.ZIP 1,587 Bytes

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Last revised: Wednesday, October 08, 2008

77-7-18. Citation on misdemeanor or infraction charge.

A peace officer, in lieu of taking a person into custody, any public official of any county or municipality charged with the enforcement of the law, a port-of-entry agent as defined in Section **72-1-102**, an animal control officer of a special service district under Title 17D, Chapter 1, Special Service District Act, that is authorized to provide animal control service, and a volunteer authorized to issue a citation under Section **41-6a-213** may issue and deliver a citation requiring any person subject to arrest or prosecution on a misdemeanor or infraction charge to appear at the court of the magistrate before whom the person should be taken pursuant to law if the person had been arrested.

Amended by Chapter 360, 2008 General Session
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Last revised Wednesday, October 08, 2008

77-7-21. Proceeding on citation -- Voluntary forfeiture of bail -- Parent signature required -- Information, when required.

(1) (a) A copy of the citation issued under Section **77-7-18** that is filed with the magistrate may be used in lieu of an information to which the person cited may plead guilty or no contest and be sentenced or on which bail may be forfeited.

(b) With the magistrate's approval, a person may voluntarily forfeit bail without appearance being required in any case of a class B misdemeanor or less.

(c) Voluntary forfeiture of bail shall be entered as a conviction and treated the same as if the accused pleaded guilty.

(d) If the person cited is under 18 years of age, and if any of the charges allege a violation of Title 41, the court shall promptly mail a copy of the citation or a notice of the citation to the address as shown on the citation, to the attention of the parent or guardian of the defendant.

(2) An information shall be filed and proceedings held in accordance with the Rules of Criminal Procedure and all other applicable provisions of this code if the person cited:

(a) willfully fails to appear before a magistrate pursuant to a citation issued under Section **77-7-18**;

(b) pleads not guilty to the offense charged; or

(c) does not deposit bail on or before the date set for the person's appearance.

(3) (a) The information is an original pleading.

(b) If a person cited waives by written agreement the filing of the information, the prosecution may proceed on the citation.

Amended by Chapter 100, 1994 General Session
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Last revised: Wednesday, October 08, 2008

Rule 4. Prosecution of public offenses.

(a) Unless otherwise provided, all offenses shall be prosecuted by indictment or information sworn to by a person having reason to believe the offense has been committed.

(b) An indictment or information shall charge the offense for which the defendant is being prosecuted by using the name given to the offense by common law or by statute or by stating in concise terms the definition of the offense sufficient to give the defendant notice of the charge. An information may contain or be accompanied by a statement of facts sufficient to make out probable cause to sustain the offense charged where appropriate. Such things as time, place, means, intent, manner, value and ownership need not be alleged unless necessary to charge the offense Such things as money, securities, written instruments, pictures, statutes and judgments may be described by any name or description by which they are generally known or by which they may be identified without setting forth a copy However, details concerning such things may be obtained through a bill of particulars Neither presumptions of law nor matters of judicial notice need be stated.

(c) The court may strike any surplus or improper language from an indictment or information

(d) The court may permit an indictment or information to be amended at any time before verdict if no additional or different offense is charged and the substantial rights of the defendant are not prejudiced. After verdict, an indictment or information may be amended so as to state the offense with such particularity as to bar a subsequent prosecution for the same offense upon the same set of facts

(e) When facts not set out in an information or indictment are required to inform a defendant of the nature and cause of the offense charged, so as to enable him to prepare his defense, the defendant may file a written motion for a bill of particulars. The motion shall be filed at arraignment or within ten days thereafter, or at such later time as the court may permit. The court may, on its own motion, direct the filing of a bill of particulars. A bill of particulars may be amended or supplemented at any time subject to such conditions as justice may require. The request for and contents of a bill of particulars shall be limited to a statement of factual information needed to set forth the essential elements of the particular offense charged.

(f) An indictment or information shall not be held invalid because any name contained therein may be incorrectly spelled or stated.

(g) It shall not be necessary to negate any exception, excuse or proviso contained in the statute creating or defining the offense.

(h) Words and phrases used are to be construed according to their usual meaning unless they are otherwise defined by law or have acquired a legal meaning.

(i) Use of the disjunctive rather than the conjunctive shall not invalidate the indictment or information

(j) The names of witnesses on whose evidence an indictment or information was based shall be endorsed thereon before it is filed. Failure to endorse shall not affect the validity but endorsement shall be ordered by the court on application of the defendant. Upon request the prosecuting attorney shall, except upon a showing of good cause, furnish the names of other witnesses he proposes to call whose names are not so endorsed.

(k) If the defendant is a corporation, a summons shall issue directing it to appear before the magistrate. Appearance may be by an officer or counsel Proceedings against a corporation shall be the same as against a natural person.

Rule 7. Proceedings before magistrate.

(a) When a summons is issued in lieu of a warrant of arrest, the defendant shall appear before the court as directed in the summons

(b) When any peace officer or other person makes an arrest with or without a warrant, the person arrested shall be taken to the nearest available magistrate for setting of bail If an information has not been filed, one shall be filed without delay before the magistrate having jurisdiction over the offense

(c)(1) In order to detain any person arrested without a warrant, as soon as is reasonably feasible but in no event longer than 48 hours after the arrest, a determination shall be made as to whether there is probable cause to continue to detain the arrestee The determination may be made by any magistrate, although if the arrestee is charged with a capital offense, the magistrate may not be a justice court judge The arrestee need not be present at the probable cause determination

(c)(2) A written probable cause statement shall be presented to the magistrate, although the statement may be verbally communicated by telephone, telefaxed, or otherwise electronically transmitted to the magistrate

(c)(2)(A) A statement which is verbally communicated by telephone shall be reduced to a sworn written statement prior to submitting the probable cause issue to the magistrate for decision The person reading the statement to the magistrate shall verify to the magistrate that the person is reading the written statement verbatim, and shall write on the statement that person's name and title, the date and time of the communication with the magistrate, and the determination the magistrate directs to be indicated on the statement

(c)(2)(B) If a statement is verbally communicated by telephone, telefaxed, or otherwise electronically transmitted, the original statement shall, as soon as practicable, be filed with the court where the case will be filed

(c)(3) The magistrate shall review the probable cause statement and from it determine whether there is probable cause to continue to detain the arrestee

(c)(3)(A) If the magistrate finds there is not probable cause to continue to detain the arrestee, the magistrate shall order the immediate release of the arrestee

(c)(3)(B) If the magistrate finds probable cause to continue to detain the arrestee, the magistrate shall immediately make a bail determination The bail determination shall coincide with the recommended bail amount in the Uniform Fine/Bail Schedule unless the magistrate finds substantial cause to deviate from the Schedule

(c)(4) The presiding district court judge shall, in consultation with the Justice Court Administrator, develop a rotation of magistrates which assures availability of magistrates consistent with the need in that particular district The schedule shall take into account the case load of each of the magistrates, their location and their willingness to serve

(c)(5) Nothing in this subsection (c) is intended to preclude the accomplishment of other procedural processes at the time of the determination referred to in paragraph (c)(1) above

(d)(1) If a person is arrested in a county other than where the offense was committed the person arrested shall without unnecessary delay be returned to the county where the crime was committed and shall be taken before the proper magistrate under these rules

(d)(2) If for any reason the person arrested cannot be promptly returned to the county and the charge against the defendant is a misdemeanor for which a voluntary forfeiture of bail may be entered as a conviction under Subsection 77-7-21(1), the person arrested may state in writing a desire to forfeit bail, waive trial in the district in which the information is pending, and consent to disposition of the case in the county in which the person was arrested, is held, or is present

(d)(3) Upon receipt of the defendant's statement, the clerk of the court in which the information is pending shall transmit the papers in the proceeding or copies of them to the clerk of the court for the county in which the defendant is arrested, held, or present The prosecution shall continue in that county

(d)(4) Forfeited bail shall be returned to the jurisdiction that issued the warrant

(d)(5) If the defendant is charged with an offense other than a misdemeanor for which a voluntary forfeiture of bail may be entered as a conviction under Subsection 77-7-21(1), the defendant shall be taken without unnecessary delay before a magistrate within the county of arrest for the determination of bail under Section 77-20-1 and released on bail or held without bail under Section 77-20-1

(d)(6) Bail shall be returned to the magistrate having jurisdiction over the offense, with the record made of the proceedings before the magistrate

(e)The magistrate having jurisdiction over the offense charged shall, upon the defendant's first appearance, inform the defendant

(e)(1) of the charge in the information or indictment and furnish a copy,

(e)(2) of any affidavit or recorded testimony given in support of the information and how to obtain them,

(e)(3) of the right to retain counsel or have counsel appointed by the court without expense if unable to obtain counsel,

(e)(4) of rights concerning pretrial release, including bail; and

(e)(5) that the defendant is not required to make any statement, and that the statements the defendant does make may be used against the defendant in a court of law.

(f) The magistrate shall, after providing the information under paragraph (e) and before proceeding further, allow the defendant reasonable time and opportunity to consult counsel and shall allow the defendant to contact any attorney by any reasonable means, without delay and without fee.

(g) If the charge against the defendant is a misdemeanor, the magistrate shall call upon the defendant to enter a plea.

(g)(1) If the plea is guilty, the defendant shall be sentenced by the magistrate as provided by law.

(g)(2) If the plea is not guilty, a trial date shall be set. The date may not be extended except for good cause shown. Trial shall be held under these rules and law applicable to criminal cases.

(h)(1) If a defendant is charged with a felony, the defendant shall be advised of the right to a preliminary examination. If the defendant waives the right to a preliminary examination, and the prosecuting attorney consents, the magistrate shall order the defendant bound over to answer in the district court.

(h)(2) If the defendant does not waive a preliminary examination, the magistrate shall schedule the preliminary examination. The examination shall be held within a reasonable time, but not later than ten days if the defendant is in custody for the offense charged and not later than 30 days if the defendant is not in custody. These time periods may be extended by the magistrate for good cause shown. A preliminary examination may not be held if the defendant is indicted.

(i)(1) Unless otherwise provided, a preliminary examination shall be held under the rules and laws applicable to criminal cases tried before a court. The state has the burden of proof and shall proceed first with its case. At the conclusion of the state's case, the defendant may testify under oath, call witnesses, and present evidence. The defendant may also cross-examine adverse witnesses.

(i)(2) If from the evidence a magistrate finds probable cause to believe that the crime charged has been committed and that the defendant has committed it, the magistrate shall order that the defendant be bound over to answer in the district court. The findings of probable cause may be based on hearsay in whole or in part. Objections to evidence on the ground that it was acquired by unlawful means are not properly raised at the preliminary examination.

(i)(3) If the magistrate does not find probable cause to believe that the crime charged has been committed or that the defendant committed it, the magistrate shall dismiss the information and discharge the defendant. The magistrate may enter findings of fact, conclusions of law, and an order of dismissal. The dismissal and discharge do not preclude the state from instituting a subsequent prosecution for the same offense.

(j) At a preliminary examination, the magistrate, upon request of either party, may exclude witnesses from the courtroom and may require witnesses not to converse with each other until the preliminary examination is concluded. On the request of either party, the magistrate may order all spectators to be excluded from the courtroom.

(k)(1) If the magistrate orders the defendant bound over to the district court, the magistrate shall execute in writing a bind-over order and shall transmit to the clerk of the district court all pleadings in and records made of the proceedings before the magistrate, including exhibits, recordings, and any typewritten transcript.

(k)(2) When a magistrate commits a defendant to the custody of the sheriff, the magistrate shall execute the appropriate commitment order.

(l)(1) When a magistrate has good cause to believe that any material witness in a pending case will not appear and testify unless bond is required, the magistrate may fix a bond with or without sureties and in a sum considered adequate for the appearance of the witness.

(l)(2) If the witness fails or refuses to post the bond with the clerk of the court, the magistrate may commit the witness to jail until the witness complies or is otherwise legally discharged.

(l)(3) If the witness does provide bond when required, the witness may be examined and cross-examined before the magistrate in the presence of the defendant and the testimony shall be recorded. The witness shall then be discharged.

(l)(4) If the witness is unavailable or fails to appear at any subsequent hearing or trial when ordered to do so, the recorded testimony may be used at the hearing or trial in lieu of the personal testimony of the witness.

Advisory Committee Notes

Rule 10. Arraignment.

(a) Upon the return of an indictment or upon receipt of the records from the magistrate following a bind-over, the defendant shall forthwith be arraigned in the district court. Arraignment shall be conducted in open court and shall consist of reading the indictment or information to the defendant or stating to him the substance of the charge and calling on him to plead thereto. He shall be given a copy of the indictment or information before he is called upon to plead.

(b) If upon arraignment the defendant requests additional time in which to plead or otherwise respond, a reasonable time may be granted.

(c) Any defect or irregularity in or want or absence of any proceeding provided for by statute or these rules prior to arraignment shall be specifically and expressly objected to before a plea of guilty is entered or the same is waived.

(d) If a defendant has been released on bail, or on his own recognizance, prior to arraignment and thereafter fails to appear for arraignment or trial when required to do so, a warrant of arrest may issue and bail may be forfeited.

Rule 30. Errors and defects.

(a) Any error, defect, irregularity or variance which does not affect the substantial rights of a party shall be disregarded.

(b) Clerical mistakes in judgments, orders or other parts of the record and errors in the record arising from oversight or omission may be corrected by the court at any time and after such notice, if any, as the court may order.

Rule 24. Briefs.

(a) Brief of the appellant. The brief of the appellant shall contain under appropriate headings and in the order indicated:

(a)(1) A complete list of all parties to the proceeding in the court or agency whose judgment or order is sought to be reviewed, except where the caption of the case on appeal contains the names of all such parties. The list should be set out on a separate page which appears immediately inside the cover.

(a)(2) A table of contents, including the contents of the addendum, with page references. (a)(3) A table of authorities with cases alphabetically arranged and with parallel citations, rules, statutes and other authorities cited, with references to the pages of the brief where they are cited.

(a)(4) A brief statement showing the jurisdiction of the appellate court.

(a)(5) A statement of the issues presented for review, including for each issue: the standard of appellate review with supporting authority; and

(a)(5)(A) citation to the record showing that the issue was preserved in the trial court; or

(a)(5)(B) a statement of grounds for seeking review of an issue not preserved in the trial court.

(a)(6) Constitutional provisions, statutes, ordinances, rules, and regulations whose interpretation is determinative of the appeal or of central importance to the appeal shall be set out verbatim with the appropriate citation. If the pertinent part of the provision is lengthy, the citation alone will suffice, and the provision shall be set forth in an addendum to the brief under paragraph (11) of this rule.

(a)(7) A statement of the case. The statement shall first indicate briefly the nature of the case, the course of proceedings, and its disposition in the court below. A statement of the facts relevant to the issues presented for review shall follow. All statements of fact and references to the proceedings below shall be supported by citations to the record in accordance with paragraph (e) of this rule.

(a)(8) Summary of arguments. The summary of arguments, suitably paragraphed, shall be a succinct condensation of the arguments actually made in the body of the brief. It shall not be a mere repetition of the heading under which the argument is arranged.

(a)(9) An argument. The argument shall contain the contentions and reasons of the appellant with respect to the issues presented, including the grounds for reviewing any issue not preserved in the trial court, with citations to the authorities, statutes, and parts of the record relied on. A party challenging a fact finding must first marshal all record evidence that supports the challenged finding. A party seeking to recover attorney's fees incurred on appeal shall state the request explicitly and set forth the legal basis for such an award.

(a)(10) A short conclusion stating the precise relief sought.

(a)(11) An addendum to the brief or a statement that no addendum is necessary under this paragraph. The addendum shall be bound as part of the brief unless doing so makes the brief

unreasonably thick. If the addendum is bound separately, the addendum shall contain a table of contents. The addendum shall contain a copy of:

(a)(11)(A) any constitutional provision, statute, rule, or regulation of central importance cited in the brief but not reproduced verbatim in the brief;

(a)(11)(B) in cases being reviewed on certiorari, a copy of the Court of Appeals opinion; in all cases any court opinion of central importance to the appeal but not available to the court as part of a regularly published reporter service; and

(a)(11)(C) those parts of the record on appeal that are of central importance to the determination of the appeal, such as the challenged instructions, findings of fact and conclusions of law, memorandum decision, the transcript of the court's oral decision, or the contract or document subject to construction.

(b) Brief of the appellee. The brief of the appellee shall conform to the requirements of paragraph (a) of this rule, except that the appellee need not include:

(b)(1) a statement of the issues or of the case unless the appellee is dissatisfied with the statement of the appellant; or

(b)(2) an addendum, except to provide material not included in the addendum of the appellant. The appellee may refer to the addendum of the appellant.

(c) Reply brief. The appellant may file a brief in reply to the brief of the appellee, and if the appellee has cross-appealed, the appellee may file a brief in reply to the response of the appellant to the issues presented by the cross-appeal. Reply briefs shall be limited to answering any new matter set forth in the opposing brief. The content of the reply brief shall conform to the requirements of paragraphs (a)(2), (3), (9), and (10) of this rule. No further briefs may be filed except with leave of the appellate court.

(d) References in briefs to parties. Counsel will be expected in their briefs and oral arguments to keep to a minimum references to parties by such designations as "appellant" and "appellee." It promotes clarity to use the designations used in the lower court or in the agency proceedings, or the actual names of parties, or descriptive terms such as "the employee," "the injured person,' "the taxpayer," etc.

(e) References in briefs to the record. References shall be made to the pages of the original record as paginated pursuant to Rule 11(b) or to pages of any statement of the evidence or proceedings or agreed statement prepared pursuant to Rule 11(f) or 11(g). References to pages of published depositions or transcripts shall identify the sequential number of the cover page of each volume as marked by the clerk on the bottom right corner and each separately numbered page(s) referred to within the deposition or transcript as marked by the transcriber. References to exhibits shall be made to the exhibit numbers. If reference is made to evidence the admissibility of which is in controversy, reference shall be made to the pages of the record at which the evidence was identified, offered, and received or rejected.

(f) Length of briefs. Except by permission of the court, principal briefs shall not exceed 50 pages, and reply briefs shall not exceed 25 pages, exclusive of pages containing the table of contents, tables of citations and any addendum containing statutes, rules, regulations, or portions of the record as required by paragraph (a) of this rule. In cases involving cross-

appeals, paragraph (g) of this rule sets forth the length of briefs.

(g) Briefs in cases involving cross-appeals. If a cross-appeal is filed, the party first filing a notice of appeal shall be deemed the appellant, unless the parties otherwise agree or the court otherwise orders. Each party shall be entitled to file two briefs. No brief shall exceed 50 pages, and no party's briefs shall in combination exceed 75 pages.

(g)(1) The appellant shall file a Brief of Appellant, which shall present the issues raised in the appeal.

(g)(2) The appellee shall then file one brief, entitled Brief of Appellee and Cross-Appellant, which shall respond to the issues raised in the Brief of Appellant and present the issues raised in the cross-appeal.

(g)(3) The appellant shall then file one brief, entitled Reply Brief of Appellant and Brief of Cross-Appellee, which shall reply to the Brief of Appellee and respond to the Brief of Cross-

Appellant.

(g)(4) The appellee may then file a Reply Brief of Cross-Appellant, which shall reply to the Brief of Cross-Appellee.

(h) Permission for over length brief. While such motions are disfavored, the court for good cause shown may upon motion permit a party to file a brief that exceeds the limitations of this rule. The motion shall state with specificity the issues to be briefed, the number of additional pages requested, and the good cause for granting the motion. A motion filed at least seven days before the date the brief is due or seeking five or fewer additional pages need not be accompanied by a copy of the brief. A motion filed less than seven days before the date the brief is due and seeking more than 5 additional pages shall be accompanied by a copy of the draft brief for in camera inspection. If the motion is granted, any responding party is entitled to an equal number of additional pages without further order of the court. Whether the motion is granted or denied, the draft brief will be destroyed by the court.

(i) Briefs in cases involving multiple appellants or appellees. In cases involving more than one appellant or appellee, including cases consolidated for purposes of the appeal, any number of either may join in a single brief, and any appellant or appellee may adopt by reference any part of the brief of another. Parties may similarly join in reply briefs.

(j) Citation of supplemental authorities. When pertinent and significant authorities come to the attention of a party after that party's brief has been filed, or after oral argument but before decision, a party may promptly advise the clerk of the appellate court, by letter setting forth the citations. An original letter and nine copies shall be filed in the Supreme Court. An original letter and seven copies shall be filed in the Court of Appeals. There shall be a reference either to the page of the brief or to a point argued orally to which the citations pertain, but the letter shall state the reasons for the supplemental citations. The body of the letter must not exceed 350 words. Any response shall be made within 7 days of filing and shall be similarly limited.

(k) Requirements and sanctions. All briefs under this rule must be concise, presented with accuracy, logically arranged with proper headings and free from burdensome, irrelevant, immaterial or scandalous matters. Briefs which are not in compliance may be disregarded or stricken, on motion or sua sponte by the court, and the court may assess attorney fees against the offending lawyer.

Advisory Committee Notes

Rule 24(a)(9) now reflects what Utah appellate courts have long held. See In re Beesley, 883 P.2d 1343, 1349 (Utah 1994); Newmeyer v. Newmeyer, 745 P.2d 1276, 1278 (Utah 1987). "To successfully appeal a trial court's findings of fact, appellate counsel must play the devil's advocate. 'Attorneys must extricate themselves from the client's shoes and fully assume the adversary's position. In order to properly discharge the marshalling duty..., the challenger must present, in comprehensive and fastidious order, every scrap of competent evidence introduced at trial which supports the very findings the appellant resists.'" ONEIDA/SLIC, v. ONEIDA Cold Storage and Warehouse, Inc., 872 P.2d 1051, 1052-53 (Utah App. 1994) (alteration in original) (quoting West Valley City v. Majestic Inv. Co., 818 P.2d 1311, 1315 (Utah App. 1991)). See also State ex rel. M.S. v. Salata, 806 P.2d 1216, 1218 (Utah App. 1991); Bell v. Elder, 782 P.2d 545, 547 (Utah App. 1989); State v. Moore, 802 P.2d 732, 738-39 (Utah App. 1990).

The brief must contain for each issue raised on appeal, a statement of the applicable standard of review and citation of supporting authority.